IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1249 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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LAXMIBEN ALIAS LIMBUVALI WD/O GANGARAM TUKARAM PAWAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1249 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

MR K.T.DAVE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 30/08/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short hereinafter), Commissioner of Police, Surat City, Surat, vide order dated January 27,

2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. From the averments made in the petition it is clear that the detaining authority has considered the petitioner as bootlegger within the meaning of Section 2(b) of the Act and since one offence under the Prohibition Act is registered against her and since the detaining authority is unable to proceed under Section 57 of the Bombay Police Act as the petitioner is not convicted in minimum 3 cases under the Prohibition Act, the detaining authority has considered the activities of the petitioner as detrimental to the society at large and against the public order and detained her.

3. By filing this petitioner under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of detention and setting her at liberty forthwith. Though the petitioner has challenged the order of detention on various grounds, Ms Subhadraben Patel, learned advocate for the petitioner has restricted her arguments only on the point that the detaining authority, after considering the less drastic remedy provided under Section 57 of the Bombay Police Act which was not possible to resorted to in view of the fact that the petitioner is not convicted for three offences under the Prohibition Act any other less drastic remedy is not considered by the detaining authority which reflects non-application of mind on the part of the detaining authority and on this sole count, detention order is vitiated. She, therefore, urged to allow the petition and prayed to set the petitioner at liberty forthwith.

4. Mr. K.T.Dave, learned AGP appearing on behalf of the respondent has opposed the petition. He, however urges to pass appropriate order in light of the judgement of this Court in the case of JAYANTI NENUMEL RAMNANI VS. COMMISSIONER OF POLICE, RAJKOT & OTHERS - 2000(2) GLH 166.

5. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

6. On having perusal of the impugned order, it is seen at page 17 that authority has considered Section 57 of the Bombay Police Act and observed that in view of the

fact that the petitioner has not been convicted in minimum three cases under the Prohibition Act it was not possible to resort to Section 57 of the said Act by passing the order of detention and it would consume more time to resort to Section 56 which is the power vested with the authority to remove the persons about to commit offences. Therefore, less drastic remedy was not considered and the only alternative is to detain the petitioner under PASA.

7. A similar question arose in the case of JAYANTI NENUMEL RAMNANI (supra) wherein this Court has held that detaining authority ought to have considered possibility of resorting to less drastic remedy legally available.

8. Applying the aforesaid principles laid down by this Court to the facts of the present case, against the petitioner only one offence is registered under the Bombay Police Act on December 13, 2000, therefore, naturally, it was not open for the detaining authority to resort to the remedy under Section 57 of the said Act. However, under Section 56 of the said act, authority could have externed the petitioner but the detaining authority has not resorted to that remedy available against the petitioner and in view of the fact that against the petitioner only one offence is registered under the Prohibition Act, I am of the opinion that the order impugned cannot be sustained and deserves to be quashed and set aside.

9. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated January 27, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*